No. 02-383

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOYCE L. CAMPANA,

Petitioner,

vs.

CITY OF GREENFIELD, TIMOTHY F. SEIDER, EDWARD R. NEUDAUER and MILTON VANDERMEUSE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RAYMOND J. POLLEN
Counsel of Record
WILLIAM W. EHRKE
CRIVELLO, CARLSON & MENTKOWSKI, S.C.
710 N. Plankinton Avenue, Suite 500
Milwaukee, Wisconsin 53203
(414) 271-7722
Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Respondents do not agree with the characterization of the questions presented for review offered by the petitioner. In respondents' view, the question presented is whether the Court of Appeals correctly reviewed and applied the reorganization exception to the due process clause relating to municipal employees who lose their jobs as a result of a reorganization or downsizing as clearly enunciated in *Misek v. City of Chicago*, 783 F. 2d 98 (7th Cir. 1986). The respondents respectfully submit that the other two "questions presented" by the petitioner have no merit and were never raised either in the Federal District Court arguments relating to the motion for summary judgment, nor the Seventh Circuit Court of Appeals briefs or arguments.

LIST OF PARTIES

JOYCE L. CAMPANA is the Petitioner.

CITY OF GREENFIELD, TIMOTHY T. SEIDER, EDWARD R. NEUDAUER and MILTON VANDERMEUSE are the respondents.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondents, City of Greenfield, Timothy T. Seider, Edward R. Neudauer, and Milton Vandermeuse oppose the issuance of a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The unpublished Order of the United States Court of Appeals for the Seventh Circuit dated June 24, 2002 affirmed the Decision and Order of the United States District Court for the Eastern District of Wisconsin dated September 28, 2001. The unpublished Order of the United States Court of Appeals for the Seventh Circuit is reprinted at App. 1 to App. 4 of the Petition for Writ of Certiorari. The Decision and Order of the District Court is reprinted at App. 5 to App. 36 of the Petition for Writ of Certiorari.

JURISDICTIONAL STATEMENT

On June 24, 2002, the United States Court of Appeals for the Seventh Circuit filed its opinion in this case on appeal from the judgment and order granting defendants' motion for summary judgment, filed in the United States District Court for the Eastern District of Wisconsin on September 28, 2001. The parties agree that the Supreme Court of the United States has jurisdiction to consider the Petition for a Writ of Certiorari to the United States Court

of Appeals for the Seventh Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The relevant statutory provisions are 42 U.S.C. § 1983 and 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The city of Greenfield, Wisconsin hired Joyce Campana as its treasurer in 1991. Qualifications for that position included a bachelor's degree and four years related experience in "finance, cash management, budgeting and general accounting work". Campana held a bachelor's degree in political science and masters in public administration. She did not have a CPA degree.

In 1995, Greenfield elected a new mayor, Timothy Seider. The new administration began to examine more intensely the idea of consolidating certain city departments.

In August 1997, the city personnel committee recommended to the common council that the city combine the accounting department, which was headed by defendant Milton Vandermeuse, with the treasurers office, titling the new department the "finance department". The finance department was to be headed by a finance director. The City of Greenfield common council approved this new structure in a charter ordinance passed on August 19, 1997 and named Milton Vandermeuse (a CPA) finance director.

The City of Greenfield residents then submitted a petition for a referendum on the reorganization and that referendum was submitted to the voters on April 7, 1998. In that election, the city voters agreed to combine the offices of the comptroller and treasurer. Since the positions were combined and the finance director (CPA Milton Vandermeuse) was to head the newly reorganized department, Joyce Campana was advised the following day in a letter from the mayor that her employment would be terminated effective April 8, 1998 and she would be paid through April 30, 1998.

Ms. Campana filed suit against the city and the named city officials alleging sex discrimination under Title VII, 42 U.S.C. § 2000 E-2(a), violation of the Equal Pay Act, 29 U.S.C. § 206(d)(1), and violation of her due process rights under § 1983 and the 14th Amendment.

The Federal District Court for the Eastern District of Wisconsin granted summary judgment on all of those claims by its decision and order of September 28, 2001. (Petitioner's Appendix pp. App. 6 through App. 37) The district court issued its judgment of dismissal on the same day. (Petitioner's Appendix pp. App. 38)

In her appeal to the Seventh Circuit Court of Appeals, petitioner challenged only the portion of the District Court's order which dismissed her claim under 42 U.S.C. § 1983.

On June 24, 2002, the United States Court of Appeals for the Seventh Circuit affirmed the decision of the District Court for the Eastern District of Wisconsin

dismissing her claim under 42 U.S.C. § 1983. (Petitioner's Appendix pp. App. 1 through App. 5)

SUMMARY OF ARGUMENT

The decision of the Seventh Circuit of Appeals is appropriate and based on proper case law. No compelling reason exists for this court to review that decision. The Court of Appeals applied existing case law to the appropriate and clear facts and properly affirmed the decision of the Federal District Court. The decisions of the District Court and the Seventh Circuit Court of Appeals do not "interdict" the petitioner's right to a jury trial. Furthermore, the decisions of the District Court and the Seventh Circuit Court of Appeals did not constitute any type of infringement or restriction upon the petitioner's right to "meaningful access to the courts". The petition should be denied.

ARGUMENT

A. THE WRIT SHOULD NOT BE GRANTED AS THE ORDER OF THE SEVENTH CIRCUIT COURT OF APPEALS REVIEWED AND APPLIED THE ESTABLISHED REORGANIZATION EXCEPTION IN THE FACTUAL CONTEXT OF THIS CASE AS IT RELATES TO THE REQUIREMENT FOR A HEARING OF THE TERMINATION OF A CIVIL SERVICE EMPLOYEE.

The Seventh Circuit Court of Appeals correctly confirmed that Wisconsin law recognized a reorganization exception to a public employee's property interest in

continued employment. That confirmed that employees do not have a property interest in continued employment if their job is eliminated by a reorganization. The Court of Appeals cited *Dane County v. McCartney*, 480 N.W. 2d 830, 835 (Ct. App. 1992), and *State ex. Rel. Thien v. City of Milwaukee,* 281 N.W. 2d 653, 656 (1938). That case law confirmed that employees terminated during a reorganization are not entitled to due process.

The Court of Appeals then appropriately examined the question of an employee's ability to avoid a reorganization exception by challenging the legitimacy of the reorganization. *Nelms v. Modisett,* 153 F. 3d 815, 821 (7th Cir. 1998). The petitioner challenged the reorganization in this case claiming that it was motivated by bad faith, relying on *Garrett v. Barns,* 961 F. 2d 629, 634 (7th Cir. 1992). The petitioner also relied on and cited *Misek v. City of Chicago,* 783 F. 2d 98, 100-101 (7th Cir. 1986).

The Court of Appeals then appropriately indicated that this was not a case where the legislators' motives should be examined. In doing so, the Court of Appeals recognized and relied on *Misek v. City of Chicago,* 783 F. 2d 98 (7th Cir. 1986) to confirm the proper application of the reorganization exception and reaffirm that neither a District Court nor a Court of Appeals should examine the motives of the public legislators when a due process claim has arisen from an employee's termination during a reorganization. Based on the applicable law, the Court of Appeals affirmed the propriety of the District Court's dismissal and conclusion that the alderman's motives for passing the reorganization ordinance (which was reconfirmed in a public referendum vote in April of 1998) should not be questioned.

The Seventh Circuit Court of Appeals then appropriately addressed the petitioner's alternative argument that she was "fired by the voters on the 1998 referendum". The Court of Appeals correctly found that the District Court did not err when it did not examine the voters' motives. The Court of Appeals addressed that argument appropriately and confirmed that pursuant to Wisconsin law, the referenda do not create ordinances, they merely permit voters to prevent them from taking affect.

In its well-written decision, the Seventh Circuit Court of Appeals analyzed the facts and issues and appropriately applied existing case law to enforce the reorganization exception which, contrary to petitioner's statement, had existed in the law prior to this case. Therefore, petitioner cannot now be heard to state that the application of the reorganization exception by the Federal District Court and the Seventh Circuit Court of Appeals was "heretofore unexpressed".

The Seventh Circuit acknowledged the reorganization exception in 1986:

" . . . they were improperly dismissed unless . . . it should be determined that their discharge was pursuant to an actual reorganization of the agency." *Misek v. City of Chicago*, 783 F. 2d 98, 101 (7th Cir. 1986).

The exception was reiterated in 1992:

"A reorganization is a legitimate reason to terminate someone who is performing satisfactorily." *Garrett v. Barnes*, 961 F. 2d 629, 633 (7th Cir. 1992).

In 1998, the Seventh Circuit Court of Appeals again recognized the exception in *Nelms v. Modisett*, 153 F. 3d 815, 821 (7th Cir. 1998), recognizing that a reorganization

"eliminating the need for (the employee's) position" constitutes a valid reason for removal.

The District Court and Court of Appeals' opinions clearly show that the reorganization exception had been in existence, had been expressed, and had been analyzed in the past and was appropriately applied in this case. Petitioner's attempt to label the Court of Appeals' reasoning based on "preexisting state decisions" "faulty" is misplaced. The District Court and Court of Appeals relied on Seventh Circuit established case law which confirmed that the reorganization exception existed and that state law would be reviewed in the context of the Federal Court's jurisdiction to address the specific issue in question. As a result, the exception has been established, stated and in existence at the Federal Appellate level dating back to 1986 (*Misek*), 1992 (*Garrett*), and 1998 (*Nelms*).

Petitioner would now have this court ignore the decisions and usurp the power of the Seventh Circuit Court of Appeals going back sixteen years. This is not the function of the Supreme Court.

Based on the above, no compelling reason exists for this court to accept the petition under petitioner's first argument. Petitioner's request must be denied.

B. THE DISTRICT COURT'S DECISION DISMISSING PETITIONER'S CASE AND THE SEVENTH CIRCUIT COURT OF APPEALS' AFFIRMATION OF THAT DISMISSAL DID NOT "SUBVERT AND INTERDICT" PETITIONER'S RIGHT TO A JURY TRIAL, AND PETITIONER NEVER RAISED THAT ISSUE AT THE DISTRICT COURT OR COURT OF APPEALS. SUCH AN ARGUMENT DOES NOT SUPPORT THE ACCEPTANCE OF THIS PETITION, AND HAS BEEN WAIVED.

Petitioner next argues that the decisions of the Federal District Court and the Court of Appeals somehow deprived her of her Seventh Amendment right to a jury trial.

First of all, assuming for the moment that there would be any merit to the argument (which is not the case), respondents submit that the petitioner waived any such argument as it was never raised either in the Federal District Court in response to the summary judgment motion nor in the appeal to the Seventh Circuit. The reason for petitioner's avoidance of that issue and waiver thereof is obvious. Petitioner knows full well that the Federal Rules of Civil Procedure provide specifically for the petitioner's rights to a jury trial in conjunction with a defendant's rights to file for summary judgment dismissal.

It is disingenuous for a petitioner to avail herself of the jurisdiction of the Federal Courts both at the District Court level and the Court of Appeals level, and then in hindsight, after she has lost the summary judgment motion and the appeal, now claim that the decisions of the courts deprived her of her right to a jury trial.

Petitioner spends nearly seven pages of her petition discussing the "fundamental liberty" of the right to a jury trial. The petitioner cites irrelevant case law that merely reinforces the fact that a plaintiff in *certain types of cases* has a right *to demand* a jury trial. Petitioner fails to take the next step, however, and admit that the Federal Rules of Civil Procedure and applicable case law clearly provide a defendant with a right to avoid such a jury trial through summary judgment when no material question of fact exists to justify a trial. None of the historic or general case law relating to the right to a jury trial cited by the petitioner addresses that right in the context of an appropriately filed and appropriately decided motion for summary judgment dismissal. It is instructive and interesting to note that none of the cases cited by the petitioner involve the claim that a plaintiff had been denied the right to a jury trial *after* his or her case had been dismissed pursuant to summary judgment motion and the dismissal has been affirmed by the Court of Appeals.

Petitioner's argument that the decisions of the respective courts deprived her of her right to a jury trial borders on frivolous and is clearly without any basis in law or fact. That, combined with the fact that petitioner waived that argument by never raising it at the District Court or Court of Appeals confirms that petitioner's argument fails to provide a basis for this court to review their decisions.

C. THE WRIT SHOULD NOT BE GRANTED AS THE DECISIONS OF THE DISTRICT COURT AND COURT OF APPEALS DID NOT CONSTITUTE ANY TYPE OF "RESTRICTION UPON THE PETITIONER'S RIGHT TO MEANINGFUL ACCESS TO THE COURT", AND THAT ARGUMENT HAS BEEN WAIVED.

In a fashion similar to the near-frivolous approach relating to the claimed deprivation of a right to a jury trial, petitioner asserts that she was restricted from having "meaningful access to the courts".

Again, petitioner has waived any such argument as she never conceptualized nor presented any such argument either in the summary judgment proceedings or the Court of Appeals.

Independent of the fact that she has waived this argument, it is also asserted by respondents that there is no factual or legal basis for such a claim.

Petitioner somehow takes the approach that the fact that the Court of Appeals' opinion is unpublished somehow denies her "meaningful access to the courts" because "the petitioner and her claims are for all meaningful purposes unknown for the purposes of legal history". Again, this argument borders on frivolous. To accept such an argument would result in the requirement that all opinions from the Court of Appeals be published, so as to avoid the anonymity of the plaintiff or her claims in "legal history". Such an argument is ludicrous. In fact, it seems to imply that all future litigants somehow have a right to have every Court of Appeals decision published.

Petitioner somehow, in hindsight, claims that the fact that the order is unpublished has "restricted" her meaningful access to the courts.

Petitioner availed herself of the jurisdiction of the United States Federal Court for the Eastern District of Wisconsin, and lost. She availed herself of the jurisdiction of the United States Court of Appeals for the Seventh Circuit, and lost. She has now sought the petition from this court. She has had and utilized the maximum access to the courts that any litigant could have.

The ultimate claim of petitioner in this section would seem to indicate that she feels prejudiced because the Seventh Circuit Court of Appeals decision would not be published. The decision on publishing or not publishing a decision rests with the Courts of Appeals handling said case based on standards utilized by those courts. This is not a case that should be addressed by this court solely for the purposes of determining whether or not a case should be published or not published or the effect of whether a decision is published or unpublished. This is hindsight argument that does not address and should not be utilized to attempt to avoid the well-founded decisions of the District Court and the Court of Appeals in this case. To accept petitioner's argument would mean that this court should accept all petitions on unpublished opinions from the various appellate courts at the Federal level. Clearly there is no reason to do so.

CONCLUSION

The decisions of the lower courts are based on well-established and clear case law.

There is no basis for any argument that the decisions have deprived the petitioner of her right to a jury trial nor of her "meaningful access to the courts".

Based on the above, there is no compelling reason whatsoever for this court to accept the petition to review.

The decision of the District Court and the Court of Appeals should not be disturbed. They are well-founded. Therefore, it is respectfully submitted that this court should deny the petition for the writ of certiorari.

Dated this 9th day of October, 2002.

Respectfully submitted,

RAYMOND J. POLLEN
Counsel of Record
WILLIAM W. EHRKE
CRIVELLO, CARLSON &
MENTKOWSKI, S.C.
710 N. Plankinton Ave.,
Suite 500
Milwaukee, Wisconsin 53203
(414) 271-7722
Attorneys for Respondents